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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,405	01/23/2004	John Chen	1001.1677101	9509
28075 7590 06/30/2010 CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
EXAMINER				
HALL, DEANNA K				
ART UNIT		PAPER NUMBER		
3767				
MAIL DATE		DELIVERY MODE		
06/30/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/764,405

Applicant(s)

CHEN ET AL.

Examiner

DEANNA K. HALL

Art Unit

3767

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-11, 14-16, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-11, 14-16, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgments

1. This office action is in response to the reply filed 4/23/10.
2. In the reply, the applicant amended claims 1, 10, 14-15. Claims 1-5, 8-11, 14-16, 19-20 are pending in the application.
3. The objection to claim 14 is withdrawn due to applicant's amendment of this claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-5, 8-11, 14-16, 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters et al. (US 5,549,552) in view of Mugge et al. (US 5,478,620).**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject

matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(I)(1) and § 706.02(I)(2).

Peters discloses a balloon catheter assembly and method comprising: a first tubular member 34 having a proximal portion and a distal portion with a lumen 43 extending between the proximal portion and the distal portion; a balloon 37 having a proximal waist length 38, a distal waist length 39 and an expandable region 45 disposed about the distal portion; and a tie layer 47 disposed between the proximal waist length or distal waist length and the first tubular member C9 L17-22, C5 L30-36.

Peters discloses the invention as substantially claimed (see above). However, Peters does not directly disclose the tie layer comprising a polyester polymer layer disposed on a polyamide layer, the polyamide layer disposed between the polyester layer and the first tubular member. Mugge teaches, in addition to 3 layer pipes, pipes that can be manufactured with 5 or 7 layers, thus the 5 or 7 layer pipes having more than one intermediate layer C3L54-57. Components for the intermediate layers are taught in Mugge as Z1, Z2, Z3, Z4 and Z5. The polyamide layer comprises a copolymer of polyester and polyamide (see claim 3) and the polyester layer comprises a

polybutylene terephthalate (Z1, Z2, Z3). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the device of Peters with the two tie layers as taught by Mugge to ensure proper bonding of the layers to the inner tube and to each other since the layers are or can be all made of similar materials C8L15-19, C6L66-C7L5. Further, the order of the tie layers would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167. The layers would be capable of being arranged with the polyamide layer possessing a greater bonding affinity for the first tubular member and the polyester layer possessing a greater bonding affinity for the balloon because in Peters it is taught that if similar materials are used adhesives may not be necessary for bonding C6L66-67 and Peters describes the balloon as being formed from an aromatic polyester and the tubular member from a polyamide C6L54-C7L5.

In reference to claims 2-5, Peters discloses that alternative materials as known to those skilled in the art can be used for the tubular member and the balloon C3 L37-42. The balloon can be formed from an aromatic polyester or a PET and the tubular member can be formed from a polyamide or a polyether block amide C6 L54- C7 L5.

Response to Arguments

6. Applicant's arguments have been fully considered but they are not persuasive. Applicants arguments have been addressed in the above rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DEANNA K. HALL** whose telephone number is (571)272-2819. The examiner can normally be reached on M-F 11:00am-7:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deanna K. Hall/

Examiner, Art Unit 3767

6/28/10

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767